



**EDENTON-CHOWAN  
PLANNING AND INSPECTIONS DEPARTMENT**

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**Town of Edenton  
&  
Chowan County  
Board of Adjustment  
MINUTES  
Council Chambers  
Wednesday, December 13, 2006  
6:00 p.m.**

**DRAFT**

**\*\*Sound is distorted\*\***

Elizabeth Bryant called the joint workshop meeting of the Edenton Board of Adjustment and the Chowan County Board of Adjustment to order. Elizabeth Bryant, Planner then called the roll. Lori Ann Curtin, Rodger Hudson, Larry McLaughlin, Preston Eley, Deems Cole, Harry Rosenblatt, Brian White, and Dan Ward were all present.

Ms. Bryant introduced Peter Rascoe, Special Projects Officer for Chowan County and Charles Busby, Town Attorney.

Ms. Bryant noted that the packets were different for the Town and County. She said the Board of Adjustment workshop packet was done by the Institute of Government. She said the Boards will discuss variances and tests for variances. She said several articles on conflicts of interest and takings from the Institute of Government. She said the difference between the Town and County Board of Adjustment is that Town BOA hears Special Use Permit requests and the County only hears Variance Requests and Appeals.

Ms. Bryant noted the packet on Board of Adjustment Workshop (see meeting file CCBOA, December 13, 2006 and Edenton Board of Adjustment, December 13, 2006). She said page 5 lists different types of zoning decisions. She said the Board of Adjustment hears Quasi Judicial cases, the Town Planning Board hears Legislative cases and Town Council has legislative and Quasi Judicial proceedings. She said the hearing is evidentiary where the applicant where the applicant must present evidence that is a written record as well as the presentation made or cross examination or opposing or supportive arguments from people present. She said the BOA is required to make written findings of fact. She said the minutes and the official variance granted form serve as

written findings of fact. She said this is prepared by staff and signed by the Chairman of the Board of Adjustment. She said a 4/5ths majority is required to decide in favor of an applicant, she said this is why the Board has five members and two alternates. She said only the standards set in the Ordinance can be applied for a decision. She said the Board is allowed to make conditions based on the Ordinance. She said all decisions of the BOA can be appealed to Superior Court. She said often the BOA hears appeals of decisions from other Boards or Staff.

She stated that a conflict of interest is any financial interest or personal bias would disqualify a Board member for having a conflict of interest. She said a Board member should state the nature of their conflict and it would be up to the Board to vote on whether or not the Board member should be recused. She said the Board member should not participate in the discussion or the action taken on the case if there is a conflict. She said small Town life, such as going to church with an applicant does not create a conflict of interest. She asked the Board to remember the standard, personal bias or financial interest.

Mr. Busby noted that a Board member must note that they feel there is a conflict of interest but that other Board members can not point out a conflict of interest.

Ms. Bryant noted that as long as a Board member discloses their conflict, it is up to the Board to determine if they feel there is a conflict of interest.

Ms. Bryant noted the Board is charged to take all the evidence that is presented at the hearing and base a decision on that. She said it would be wrong to come in with a predetermined outcome in mind based on the written record. She said the Board should not make up their mind about the case until they have heard the evidence at the hearing. She said the burden is on the applicant to present the evidence.

Ms. Bryant and Mr. Rosenblatt discussed public comment and deliberation times during a hearing and administration of the oath to all who wished to speak.

Mr. Busby said if a Board member had a question about legality to confer with the Attorney about specific legal issues.

Ms. Bryant said closed session is always recorded, she said the Board member needs to decide if the question can be asked in front of the public or in private. She said the Board should not make a habit of going into closed session every time there is a hearing.

Ms. Bryant noted that evidence is supposed to be substantial, competent and material. She said if Board feels that the evidentiary period of the hearing is becoming repetitive and no new points are being made, it is within the rights of the board to ask if there are any new points to be expressed and if not, and then close that portion of the hearing. She said a limit of time may be set on presentations.

Ms. Bryant said that often in small communities a person may try to contact a Board member to discuss an upcoming case. She said that the Board members are not supposed to discuss the case. She said that a Board member may politely say that they are not allowed to discuss the case with them, or suggest that they submit written statements to staff to be entered into the record but no discussion should be held outside of the hearing.

Ms. Bryant said each case that is heard by the Board of Adjustment stands on its own. She said that prior decisions are not legally binding. Ms. Bryant said the BOA is also in charge of hearing appeals and interpretations. She said if a staff decision is determined to be wrong the interpretation is sent back to staff. The BOA does not make a decision on interpretation. Ms. Bryant said the BOA does not decide if they agree with the decision of the Board or Staff but determine if proper procedure was followed in the decision making process, if the Board stepped out of the boundary of the decision, or if someone acted arbitrarily or capriciously.

Ms. Bryant said she wanted to cover variances. She said that a variance is bending of rules from the standards of the ordinance. Ms. Bryant noted the Standards for granting variances. She read:

1. To qualify for a variance, the applicant must show that strict application of the rules would create practical difficulties and unnecessary hardships. Tests used to determine unnecessary hardship include:

No reasonable use of the property without a variance  
Hardship results from application of ordinance  
Hardship is suffered by the property  
Hardship is not self created  
Hardship is peculiar to the property.

Ms. Bryant said the ordinance requires the BOA to use these tests. She read Article 13, Section 2 from the County Development Code for the County BOA members.

Mr. Busby said all of the criteria have to be found by the BOA to be true in order to grant a variance.

Ms. Bryant added that Article 13 Section 8, B requires the BOA to make an affirmative finding on each of the requirements set forth in Section 13.02 (Chowan County Development Codes).

Ms. Bryant noted that the Town UDO has the exact language in requiring an affirmative finding on each of the criteria listed.

The Board discussed non-conformities and the test criteria with the attorneys and staff.

Ms. Bryant noted that variances for new construction in newly platted neighborhoods designed after the zoning districts were established. She said if the Board allowed variances in those neighborhoods, they would set precedence.

Ms. Bryant read the first test. She said number one, reasonable use is a term that has been questioned by the Board. She asked what questions the Board members have.

A Board member said reasonable use could be defined from several different aspects. He said from a financial perspective and a physical perspective. He said in a previous case, a home could be built on the lot, proposed. But common sense was a major factor taken into consideration.

Ms. Bryant said those tests and findings are not always easy. She said it is up to the Board to apply those tests. She added that the new ordinance does not allow variances from lot size requirements. She said each decision needed to be made on a case by case basis.

Ms. Bryant said if an applicant is before the BOA they are either in a new neighborhood or they want it where they want it or it is a unique situation. She said these cases are where there is no administrative flexibility in the ordinance. Ms. Bryant noted that these standards are North Carolina General Statutes.

Mr. Rascoe and Mr. Busby both discussed General Statutes and the purpose of the Ordinances.

The Boards discussed the tests in more detail. Staff said the Board is looking for yes answers to the questions.

There was a discussion about voting on the criteria. Ms. Bryant explained that there have been times where nobody made a motion in the affirmative on the first criteria, and if there is no motion in the affirmative, the application fails.

Ms. Bryant said the findings are always listed in the staff report.

Ms. Bryant noted that the Town Board of Adjustment may possibly have an appeal application on the docket. She said the Board will have to meet to elect officers.

There being no further discussion, the meeting was adjourned.

